**THE HON'BLE SRI JUSTICE V.V.S.RAO**

**WRIT PETITION No.2615 of 2007**

**Dated:08.03.2007**

Between:

Pamarthi Rajani.

…Petitioner

and

The District Panchayat Officer and another.

…Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

**WRIT PETITION No.2615 of 2007**

**ORDER:**

In the elections held to the Office of Sarpanch of Ramannagudem Gram Panchayat in Krishna District, the petitioner was elected as Sarpanch. The second respondent issued a notice dated 15.09.2006 asking the petitioner to submit explanation regarding her age and copy of a document in proof of her age by 18.09.2006. The petitioner filed objections before the second respondent. The second respondent again issued another notice on 27.11.2006 directing her to submit a detailed report and to appear before him in person on 30.11.2006. Similar notices were issued on 30.11.2006, 02.01.2007 and 19.01.2007. In the last two communications she was informed that if she fails to submit statement in the presence of the second respondent, necessary action would be taken under the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). Aggrieved by this, the petitioner filed the instant Writ Petition seeking a writ of mandamus declaring the action of the respondents in proposing to decide disqualification incurred by the petitioner as illegal and arbitrary.

Learned Counsel for the petitioner relies on the decisions of this Court in **Chava Rosaiah v. Chintala Venkateswarlu**[1] and **N.Tirupataiah v. District Panchayat Officer, Nellore**[2] and submits that when any person has a grievance about the disqualification incurred by an elected Sarpanch or a Member of the Mandal or Zilla Parishad, the remedy is to approach the District Court, and the second respondent

cannot decide the question of disqualification. **Per contra**, the learned Assistant Government Pleader for Panchayats submits that the question of approaching the District Court would arise at a later point of time, and it is competent for the respondents to conduct preliminary enquiry as contemplated under Section 22 of the Act.

Section 22 of the Act as amended by A.P Act No.22 of 2002 reads as under.

> **22.Authority to decide questions of disqualification of members:-** (1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which office of the gram panchayat is situated for decision.
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> (2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.
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> (3) Where a person ceases to be the Sarpanch or Upa Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.

In **N.Tirupataiah v. District Panchayat Officer, Nellore** (supra) analyzing the above provision, this Court enumerating the person or persons who are entitled to approach the District Court observed therein as under.

> An analysis of above provision would show that (i) any voter or authority may make allegation in writing that a Member or a Sarpanch of Gram Panchayat is not qualified or has become disqualified under Sections 17 to 20 of the Act; (ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the Panchayat Secretary appointed to each Gram Panchayat; [As amended by AP Act No.22 of 2002 with effect from 20.6.2002]. (iii) on receipt

> of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the Member or Sarpanch, who allegedly incurred the disqualification; (iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, the Member or any other Member of the Gram Panchayat, or Panchayat Secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a Member or Sarpanch incurred disqualification and (v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.

Therefore, it is not possible to accept the submission that it is only the complainant who has to go to civil Court. Assuming that after conducting enquiry the authority under Section 22 of the Act informs the elected candidate that he/she incurs disqualification and therefore disqualified to continue as officer holder, the aggrieved person would be certainly the elected person who has to seek remedy before the District Court. In case the complaint is rejected, then it would be for the complainant to seek a decision from the District Court. In either case as per subsection (2) of Section 22 of the Act unless the decision is rendered by the District Court, the Member shall be entitled to act as if he/she is qualified or were not disqualified.

The decision of the Division Bench in **Chava Rosaiah v. Chintala Venkateswarlu** (supra) has no relevance to the facts of this case as the second respondent has only issued notices in response to a complaint given by Smt.Pamarthi Lakshmi Sowjanya (who lost the election) alleging that the petitioner is under aged. If that be so, unless and until the petitioner produces necessary proof of her age and the same is considered, we cannot say that the second respondent disqualified her. It appears, the petitioner wants to thwart enquiry by the second respondent. The learned Counsel for the petitioner has not raised any further submission.

The Writ Petition is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

08.03.2007
vs

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[1] 2004 (1) ALT 327 (DB)

[2] 2005 (1) ALD 181